

Appendix A

Fee-to-Trust Application

**POKAGON BAND OF POTAWATOMI INDIANS
MICHIGAN AND INDIANA**

**APPLICATION TO ACQUIRE LAND IN TRUST
(SOUTH BEND, INDIANA CONSOLIDATION SITE)**

Submitted to the Bureau of Indian Affairs

May 14, 2012

Pokagon Band of Potawatomi Indians, Michigan and Indiana

**Application To Acquire Land In Trust
(South Bend, Indiana Consolidation Site)**

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INTRODUCTION

The Pokagon Band of Potawatomi Indians, Michigan and Indiana, a federally-recognized Indian tribe (the “Band”), acting by and through its Tribal Council (the “Council”), requests that the Secretary of the Interior accept in trust status for the benefit of the Pokagon Band of Potawatomi Indians certain real property consisting of seventeen parcels of land with a total acreage of 164.22, more or less, which are located in St. Joseph County, Indiana, as more specifically described below (the “Property”). The Band submits this application (“Application”) pursuant to Public Law 103-323, September 21, 1994, 108 Stat. 2152, as codified at 25 U.S.C. § 1300j – 1300j-8 (“An Act to Restore Federal Services to the Pokagon Band of Potawatomi Indians”, hereinafter referred to as the “Pokagon Restoration Act”, Exhibit 1), the January 11, 1999 Memorandum of Understanding between the Pokagon Band and the Secretary of the United States Department of the Interior (the “MOU”, Exhibit 2) and as authorized in Tribal Council Resolution No. 11-04-25-01, adopted April 25, 2012, Exhibit 3.

Pursuant to the Restoration Act and the MOU, the Band is continuing to reestablish its reservation homelands in consolidation sites located in the vicinity of Dowagiac, Michigan; New Buffalo, Michigan; Hartford, Michigan; and South Bend, Indiana. The Band is federally-recognized as an Indian tribe in the state of Indiana and remains the only federally-recognized Indian tribe in Indiana. See Sections 1, 2, and 7, Pokagon Restoration Act; and List of “Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs”, 75 Fed.Reg. 60810-60814 (Oct. 1, 2010), as supplemented by 75 Fed.Reg. 66124 (Oct. 27, 2011). This Application is for property in South Bend, which will be used as the initial and primary site in South Bend for residential, governmental and economic development purposes, with a gaming resort being the center of the economic development efforts. This Application is thus for non-gaming and gaming purposes.

The Band currently has no trust land in the State of Indiana. The following brief history of the Band’s efforts over more than ten years to reestablish reservation homelands in Indiana provides background and context that should be helpful to the BIA’s consideration of this Application. A trust land application that the Band filed with the Bureau of Indian Affairs (“BIA” or “Bureau”) in 2001 included 1,460 acres located in St. Joseph County and LaPorte County, Indiana (the “North Liberty” site), 1,434 acres located in Cass County, Michigan, and 775 acres located in Van Buren County, Michigan. In February of 2002, the Band amended the trust land application to remove the North Liberty site in order to enroll 1,147 acres of the North Liberty site in a Wetland Reserve Program administered by the U.S. Department of Agriculture, Natural Resources Conservation Service. The Band determined that the best use of the 1,147 acre-portion of

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the North Liberty site would be to use it to help restore a portion of the Grand Kankakee Marsh in northwestern Indiana, which would serve important Band environmental objectives. In 2007, the Band submitted a trust land application for the 313-acre portion of the North Liberty site that did not qualify for inclusion in the Wetland Reserve Program. In 2009, the Band withdrew its trust land application for the North Liberty acreage upon concluding that the site was not well-suited to achieve the Band's housing, economic development, and other governmental objectives in the State of Indiana. In 2011, the Band submitted a trust land application for housing, governmental offices, light commercial development, and other non-gaming purposes for fifteen parcels of land with a total of 193.16 acres located in and near South Bend, Indiana. Thereafter, the Band began a planning process for a casino it intended to develop on land located in Elkhart County, Indiana. The Band eventually decided to abandon the Elkhart casino plans out of concern that the Elkhart County location might not be considered to be part of the South Bend consolidation site and also because the Band did not consider the Elkhart County site to be a suitable location for a casino. For the reasons explained in Section X.B of this Application, the Band determined that the land included in its 2011 trust land application would be a suitable location for the planned casino. This trust land Application includes fourteen of the fifteen parcels of land that were included in the 2011 application along with three additional contiguous parcels of land that the Band purchased this year. As a result, concurrently with its submission of this Application, the Band is withdrawing its pending 2011 trust land application for the South Bend lands.

The Band's current trust lands are limited to a 674-acre site located within the New Buffalo consolidation site in Berrien County, Michigan (taken into trust on January 27, 2006), 775 acres of land located within the Hartford consolidation site in Van Buren County, Michigan (taken into trust on June 10, 2008), and 1,434 acres of land located within the Dowagiac consolidation site (taken into trust on June 10, 2008), for a total of approximately 2,883 acres of trust land. The Pokagon Band and the Secretary of the Interior agreed in the MOU that a trust land base of up to 4,700 acres would be "commensurate with the anticipated future needs of the Band". Exhibit 2 at paragraph 3. The Band purchased the Property in fee in reliance on the MOU as the focus of its planned South Bend trust land consolidation site.

By acquiring the Property in trust for the Band, the Secretary of the United States Department of the Interior ("Secretary") will continue to carry out the mandate to establish in trust the homeland consolidation sites for the Band contemplated by the Restoration Act and the MOU. The Band needs the Property to establish an inalienable tribal land base in Indiana. A land base located in Indiana in proximity to the Band's Indiana residents will vastly improve the Band's ability to fulfill its governmental responsibilities to its citizens residing in Indiana, and will significantly improve the

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Band's ability to provide for the welfare of all of the Band's citizens¹, preserve and promote Band culture and traditions, and pursue the goals of self-governance and self-determination, which are critical to ensuring that the Pokagon Band of Potawatomi Indians will endure as a sovereign tribal nation.

The Property will also be used by the Band for economic development purposes to produce revenue to pay for the land acquisition costs of the Property, the development and construction of residential housing and governmental buildings on the Property, and the provision of governmental services. The Band will develop a gaming resort operation (the "Gaming Project") on the Property. Consistent with the findings of Congress expressed in the Indian Gaming Regulatory Act of 1988 ("IGRA", Pub. L. 100-497, U.S.C. § 2701 *et seq.*) the Gaming Project will serve a principal goal of Federal Indian policy by promoting the Band's tribal economic development, tribal self-sufficiency, and a strong tribal government. 25 U.S.C. § 2701(4). There is a great need among Band citizens and other persons that reside in the vicinity of the Property for the employment and career opportunities that will be produced by the Gaming Project. The Gaming Project is projected to create approximately 2,000 permanent jobs with good pay and benefits in a region that suffers from chronically high unemployment, especially among Band citizens. The revenue sources generated by the Gaming Project will be used, consistent with the purposes set forth in the IGRA, 25 U.S.C. § 2710(b)(2)(B), to help to secure a stable economic future for the Band and its citizens, to continue the Band's efforts to restore and develop the tribal land base in the consolidation sites, to fund Band governmental institutions and to fund essential tribal government programs and services for Band citizens. The Gaming Project will also support and enhance local and regional economic development efforts by non-native governments.

Although the Band does not presently have a Class III gaming compact with the State of Indiana, the Band anticipates that Indiana will engage in good-faith negotiations with the Band for a Class III gaming compact, which would allow the Band to develop the Gaming Project as a Class III gaming facility. If the Band is unable to obtain a Class III gaming compact with Indiana by the time the BIA issues a decision on this Application, the Band expects it will proceed with the Gaming Project by initially developing a Class II gaming facility. A description of the Gaming Project and the expected economic benefits of the Gaming Project are provided in Section X(B) below.

The Pokagon Restoration Act mandates that the Secretary acquire trust lands for the Band.² The Act does not, however, specify where such lands should be located or how

¹ The term "citizen" is used herein to refer to enrolled members of the Band.

² Congress did not allocate any funds for the Secretary to carry out the mandate in the Restoration Act to restore the Band's land base. The acquisition of the lands that have been

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much land should be acquired. The Band and the Department of the Interior agreed in the MOU that a trust land base of up to 4,700 acres “is commensurate with anticipated future needs of the Band” and that the Band would concentrate its land holdings in four “consolidation sites,” consistent with 25 C.F.R. § 151.3(a)(1). All of the consolidation sites described in the MOU lie within the Band’s ten-county service area (“Service Area”) located in southwest Michigan and northern Indiana, as provided in Section 7 of the Pokagon Restoration Act (25 U.S.C. § 1300j-6). The Property is located within the South Bend, Indiana consolidation site identified in paragraph 3 of the MOU. Exhibit 2.

The Band agreed in the MOU that any applications for trust acquisitions pursuant to the Pokagon Restoration Act would be submitted in the form required by 25 C.F.R. Part 151. Accordingly, pursuant to the MOU, the factors described in 25 C.F.R. § 151.10 are fully addressed in this Application in order to provide all necessary information to assist the Secretary in making an informed decision on the Band’s Application for trust land.

I. THE PROPERTY.

A. Location and Title Status.

The Property consists of approximately 164.58 acres, and is located in the northwestern portion of the State of Indiana, within the municipal limits of the City of South Bend. South Bend, which is the county seat of St. Joseph County, has a population of 101,168 (2010 census), which represents a 9.4% decline in population since the 2000 census.

The Property consists of seventeen contiguous parcels of land, which are identified as follows by the grantor name: (1) Jacobs, 4.5 acres; (2) Crady, 9.95 acres; (3) Bill Marvin, 85.53 acres; (4) Miltenberger, 1 acre; (5) Santana, 0.67 acre; (6) Jurgonski, 1.7 acres; (7) Sedam, 3.28 acres; (8) Horrall, 1.33 acres; (9) Hutchins, 3.16 acres; (10) Jones, 1.63 acres; (11) Cataldo, 9.71 acres; (12) Haverstock, 10.63 acres; (13) Geyer, 20.7 acres; (14) Shafer, 6.64 acres; (15) Jantzi, 0.66 acre; (16) Bova, 1.71 acres; and (17) Gary Marvin, 1.42 acres. ALTA/ACSM Land Title Surveys, including legal descriptions, of each of the seventeen parcels, which were prepared by Wightman & Associates, Inc. are attached hereto³. (Exhibit 4A, Jacobs, “Parcel 2”); (Exhibit 4B, Crady, “Parcel 3”); (Exhibit 4C, Bill Marvin, “Parcel 4”); (Exhibit 4D, Miltenberger, “Parcel 5”); (Exhibit 4E, Santana,

taken into trust to date was accomplished by the Band through private loans from the Band’s former gaming management contractor.

³ The ALTA/ACSM Land Title Surveys identify each parcel of land by numbers that the Pokagon Band assigned during the land acquisition process. The Band did not purchase all of the parcels of land that were assigned numbers and, as a result, the parcel numbers used to identify the parcels in Exhibits 4A – 4Q are not in a continuous sequence.

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“Parcel 6”); (Exhibit 4F, Jurgonski, “Parcel 7”); (Exhibit 4G, Sedam, “Parcel 8”); (Exhibit 4H, Horrall, “Parcel 9”); (Exhibit 4I, Hutchins, “Parcel 10”); (Exhibit 4J, Jones, “Parcel 11”); (Exhibit 4K, Cataldo, “Parcel 14”); (Exhibit 4L, Haverstock, “Parcel 16”); (Exhibit 4M, Geyer, “Parcel 17”); (Exhibit 4N, Shafer, “Parcel 23”); (Exhibit 4O, Jantzi, “Parcel 24”); (Exhibit 4P, Bova, “Parcel 43”); and (Exhibit 4Q, Gary Marvin, “Parcel 49”). Attached hereto is a map depicting the general location of the Property (Exhibit 5A) and a graphic representation of the Property depicting areas of planned development (Exhibit 5B).

B. Current Use.

These particular parcels of land comprising the Property were selected and assembled to meet the goals of the Pokagon Restoration Act. The Band’s selection of these parcels was also intended to fulfill the Band’s obligations under the MOU concentrate its land acquisitions within the consolidation sites.

Land cover of the Property is dominated by undeveloped woodlands and open meadow with no commercial use and no active agricultural use. See Exhibit 10. The Subject Property is bounded by Indiana State Road 23 on the northwest border, U.S. Highway 31/20 on the southwest border, and Locust Street on the east border. The topography of the property is characterized by valleys with intermittent stream flows and elevations that range from 840 feet above sea level (“ASL”) to approximately 733 feet ASL with an overall dip to the northwest. The soils on the Property are described as Coloma-Spinks-Oshtemo and Guilford-Maumee-Sparta associations soil, which the United States Department of Agriculture characterizes as possessing slight to moderate limitations for building site development. Observations of the Property made by qualified personnel in the Band’s Department of Natural Resources revealed the presence of deer, rabbit, squirrel, muskrat, and various common birds. There are five residential structures located on the Property, all of which are habitable.

II. STATUTORY AUTHORITY FOR THE ACQUISITION OF THE PROPERTY (25 C.F.R. § 151.10(a)).

The statutory authority for the acquisition of the Property is found in Section 6 of the Pokagon Restoration Act (25 U.S.C. § 1300j-5), Exhibit 1, which provides in relevant part: “The Secretary shall acquire real property for the Band. Any such real property shall be taken by the Secretary in the name of the United States in trust for the benefit of the Band and shall become part of the Band’s reservation.” See also page 2 of the Opinion of the Solicitor, U.S. Department of the Interior, September 19, 1997 (M-36991) (the “Solicitor’s Opinion”, Exhibit 6), which states that the Pokagon Restoration Act “mandates” that the Secretary of the Interior acquire land in trust for the Band. The

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Pokagon Restoration Act contains no language that would limit the Secretary's authority to acquire land in trust for the Band. As the Solicitor concluded in describing the Secretary's authority to acquire land in trust for the Band, "[t]here is no limitation or direction in the [Pokagon Restoration] Act as to where such lands should be located, or how much land should be acquired. See Solicitor's Opinion, Exhibit 6, at p. 2. A challenge to the constitutionality of the Pokagon Restoration Act, specifically including Section 6 of the Act (25 U.S.C. § 1300j-5), which authorizes the Secretary to acquire land in trust for the Band, was soundly rejected by the federal Court of Appeals for the District of Columbia Circuit in Taxpayers of Michigan Against Casinos (TOMAC) v. Norton, 433 F.3d 852, at 867 (D.C. Cir. 2006).

III. THE NEED FOR ADDITIONAL LAND (25 C.F.R. § 151.10(b)).

A. Background Regarding the Band's Efforts to Fulfill its Governmental Responsibilities in the State of Indiana.

The Band's current trust lands are located entirely in the State of Michigan. The Band has no trust land in the State of Indiana to assist it in restoring its status as a sovereign tribal nation and fulfilling its governmental responsibilities to its citizens that reside in the State of Indiana, which have been critical objectives for the Band since long before the enactment of the Pokagon Restoration Act. The Band cannot achieve these objectives without a permanent, inalienable land base in Indiana. These governmental objectives were at the heart of the Band's struggle to obtain reaffirmation by the United States of the Band's status as a sovereign, federally-recognized Indian tribe, which the United States finally provided in 1994 by enactment of the Pokagon Restoration Act. A brief description of the Band's efforts to restore the Band's status as a federally-recognized Indian tribe and to secure a reservation homeland will help to explain the Band's need for the Property to be taken into trust for the Band.

Prior to the formation of the United States, the Potawatomi Tribe, of which the Pokagon Band is a constituent part, occupied the area between Detroit and Chicago in southern Michigan, northern Indiana and northern Illinois. Various Potawatomi bands lived in villages throughout this territory, including the ancestral villages of the Pokagon Band located in the St. Joseph-Paw Paw River Valley in the southwest corner of Michigan's lower peninsula. These Potawatomi bands shared common bonds of kinship, commerce, culture, and geography. The Potawatomi villages in the St. Joseph River Valley were united behind the leadership of Leopold Pokagon in the negotiations that led to the 1833 Treaty of Chicago (the "Treaty"). As a result of the Treaty, a majority of the Potawatomi were removed from Michigan and Indiana. The Pokagon Band, as the Potawatomi villages in the St. Joseph River Valley came to be known, remained in Michigan and

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Indiana and was paid money in lieu of being given reservation land in the Indian territories out west under the terms of the Treaty.

In the years following the ratification of the Treaty, the Band was landless and had few of the resources needed for its support as it struggled with the enormous challenge of learning and adapting to farming and small-town commerce after its traditional subsistence economy and culture of hunting and fishing could no longer sustain the Band. Throughout this time, although the Band remained landless, it continued to maintain a tribal government, which enabled the Band to advocate for rights and benefits for its citizens, including the recognition of treaty rights and payments, and provided a structure that maintained the Band's sense of common identity and purpose.

The Band petitioned for reorganization and assistance pursuant to the Indian Reorganization Act of 1934. Although the legitimacy of the Band's petition was not at issue, the federal government made an administrative decision to decline to provide the benefits of the Indian Reorganization Act to the Band due to the poor financial condition of the federal government during the Great Depression. Consequently, the federal government never acquired land for the Band during the nineteenth and twentieth centuries and neglected its government-to-government relationship with the Band.

The Pokagon Restoration Act reaffirmed the government-to-government relationship between the Pokagon Band of Potawatomi Indians and the United States. Section 2 of the Pokagon Restoration Act, 25 U.S.C. § 1300j-1, Exhibit 1. See also the Solicitor's Opinion, Exhibit 6, at p. 4. In enacting the Pokagon Restoration Act, Congress made legislative findings that the Band is the political successor to the signatories of numerous treaties that ceded vast amounts of territory in the Band's ancestral homeland, the St. Joseph River Valley. The St. Joseph River Valley is located in southwestern Michigan and northern Indiana and lies partially within the Band's Service Area, which consists of the counties of Allegan, Berrien, Van Buren and Cass in the State of Michigan, and LaPorte, Saint Joseph, Elkhart, Starke, Marshall and Kosciusko in the State of Indiana. See Section 7 of the Pokagon Restoration Act, 25 U.S.C. § 1300j-6, Exhibit 1. The Property is located within the Band's Service Area, the South Bend consolidation site, and the Band's ancestral homeland in the St. Joseph River Valley.

The Pokagon Restoration Act confirmed that the Pokagon Band possessed all the attributes of tribal sovereignty recognized under federal law. The Band has determined that a critical foundation for preserving and strengthening its tribal sovereignty and culture is the restoration of the Band's land base. The importance of restoring a tribal land-base is emphasized in the Pokagon Band Constitution, which states in Article IV (Tribal Lands): "The Pokagon Band is dedicated to re-establishing a tribal land base." A copy of the Pokagon Band Constitution is attached as Exhibit 7. The Property is needed

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to further the goal of restoring the Band's land base in its homeland in the St. Joseph River Valley. The Property is also needed to consolidate tribal land ownership within the Band's Service Area, which, in the case of the Property, will facilitate the provision of tribal government services to Band citizens residing in or near the northern Indiana portion of the Band's Service Area. Until the Secretary provides the Band with an inalienable land base, the Band will be unable to properly fulfill its responsibilities as a tribal government and will be hindered in its effort to provide services, support and protection for the Band community in Indiana.

B. Specific Need for Trust Acquisition of the Subject Property.

Over the past three years, the Band has been engaged in land use master planning for all Band land holdings, including the Property, in accordance with the requirements of Article IV of the Pokagon Band Constitution as a means of addressing Band citizen concerns. The master planning process included several steps to identify the Band's current and future needs. First, basic site information was gathered about the Property and other Band lands, which included site environmental information and demographic and socio-economic information for the surrounding area. Second, two surveys were conducted to identify the needs of Band citizens with focus on the northern Indiana area. Third, inventories of Band citizen needs were compiled from Band government departments. Fourth, community meetings were held to collect Band citizen input on the development of tribal lands, which included two "charrette" style meetings to facilitate direct input regarding development options in the area of the South Bend consolidation site.

Four essential needs for the Band will be addressed by the requested transfer of the Property into trust:

1. An increased tribal land base and the first tribal land base in Indiana, which will provide suitable and healthy housing for a growing Band citizenship.

The Band has a substantial unmet housing need in Indiana, which presents the Band with significant ongoing challenges in addressing the basic needs of the Band's Indiana residents. Between December of 2010 and February of 2012, Band citizenship grew from 4338 to 4578. Over the last year, the number of Band citizens living in Indiana grew from 458 to 507, over a third of which live within a 10-mile radius of the Property. The median age for the Band population is approximately 23 years and approximately 40% of the Band's citizens are minors. The Band's Indiana citizens face a growing need for suitable housing.. Many Band citizens, including Band elders and children, live in substandard housing and some Band citizens are homeless. The Property will establish the Band's first

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permanent suitable land base in Indiana to serve the growing needs of Band citizens.

2. The need for community-focused spaces.

The transfer of the Property into trust will also assist the Band in its goal of developing community focused spaces for its Indiana residents. The size of the Property is sufficiently large to provide the Band with the ability to develop community facilities in close proximity to Band citizen housing, which is particularly important for ensuring that Band elders will remain integrated in Band community life.

3. The need for a suitable location for the delivery of tribal government services to the Band's Indiana community.

The Property is also of sufficient size to provide space for the development of Band government offices, including health services and satellite office space for various other Band government programs and service agencies. There is an underserved and growing need among the Band's Indiana citizens for medical services, education, language training, and cultural enrichment. An at-risk population among Band citizens presents an urgent, underserved need for assisted living for elders and emergency shelters for victims of domestic violence.

4. The need for a suitable location for commercial development to provide economic and employment opportunities for the Band's South Bend area community.

The location of the Subject Property along State Road 23 and U.S. Highway 31/20 and within the South Bend city limits is an especially good location to develop the Gaming Project. The fact that there are no competitive gaming facilities located close to the Property helps ensure that the Gaming Project will be successful. The anticipated benefits of the Gaming Project to provide funds for paying for and developing the Property, restoring the Band's land base in the South Bend and other consolidation sites, funding tribal governmental institutions and services, promoting tribal economic development, as well as supporting area economic development and the operations of local government agencies and charities. Further expected economic benefits include providing vital economic resources for restoring and rebuilding tribal homelands for future generations, and providing critically needed employment and career opportunities to Band members and other Native Americans.

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The land use master planning process strongly supports mixed-use development of the Property with residential, government, and commercial development. The proposed trust acquisition of the Property and the Band's mixed-use development plans for the Property will address the specific unmet needs of Band citizens in the area of the South Bend consolidation site. Many of these needs cannot be adequately addressed unless the Property is taken into trust, which will provide access to resources under a variety of federal programs, including for example reservation housing programs available under the Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA", 25 U.S.C. § 4101 *et seq.*), contracting and compacting opportunities under the Indian Self-Determination and Education Assistance Act of 1975 ("ISDEAA", 25 U.S.C. § 450 *et seq.*), and the Indian Reservation Roads program under the Safe, Accountable, Flexible and Efficient Transportation Equity Act – A Legacy for Users ("SAFETEA-LU", 23 U.S.C. § 101 *et seq.*).

IV. PURPOSES FOR WHICH THE SUBJECT PROPERTY WILL BE USED (25 C.F.R. § 151.10(c)).

The Band plans to develop housing, community spaces, and government office space on the Property as a mixed-use "tribal village" to facilitate the re-establishment of a distinct Pokagon community within Northern Indiana. The tribal village concept will revive aspects of traditional Pokagon social, political, and economic structure and organization in the State of Indiana. The tribal village development concept includes the following components or uses on the Property: a multi-purpose facility to serve as a community gathering place; educational facilities; and governmental office space, including health service offices. Also included in the tribal village concept would be approximately 44 housing units, which are planned to be comprised of one 12-unit apartment building, 4 duplex homes, and 24 single-family homes.⁴

In addition to the residential and governmental structures included in the tribal village, the Band will also develop the Gaming Project, which will be located entirely on Parcel 3 of the Property. Details of the intended scope of the Gaming Project development are contained in Section X(B) of this Application.

The City of South Bend Comprehensive Plan and the St. Joseph County – South Bend Comprehensive Plan recognize the appropriateness of the Property for economic development by identifying the area in which the Property is located as a growth area and a regional commercial node. Among the attributes of the Property that make it suitable

⁴ Some of this housing need may be met through one or more of the five existing homes located on parcels 11-17 of the Property. At present and for the next year or so, the Band intends to continue to lease some or all of the habitable houses located on the Property for housing and governmental use.

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for economic development are its proximity to major transportation routes and other required infrastructure, and a large base of potential customers. The location of the Property within the South Bend city limits in the eastern corner of the intersection of State Road 23 and U.S. Highway 31/20 provides a very high likelihood of success for the Band's Gaming Project, and allows the Band to rely on the Gaming Project to pay for the Property and its development and the provision of governmental services to Band members in Indiana.

V. IMPACT ON STATE AND POLITICAL SUBDIVISIONS (25 C.F.R. 151.10(e)).

Property tax amounts for 2011 on all of the Parcels comprising the Property, including estimates from 2010 records for some parcels, in the cumulative amount of \$28,605.54 are shown in the Property Tax Summary, Attached as Exhibit 8. The Band is not aware of any special assessments on the Property. The Band will provide evidence that all taxes and assessments have been paid prior to conveyance of title to the United States of America. Based on the total amount of property tax owed on the Property for the 2011 tax year, removal of the Property from the tax rolls will eliminate approximately \$29,000.00 in annual tax revenue to the state and/or local taxing jurisdictions.

The Band consistently spends substantial portions of its annual budget in the communities located in the vicinity of Band lands. In 2011, the Band contracted with approximately 2,000 vendors for the variety of goods and services it needed. The substantial level of commercial activity and significant expenditure of tribal revenues by the Band provides direct economic benefit to local economies and local governments within the Band's Service Area. Due to the absence of a Band land base in Indiana, little of the Band's commercial activity and spending benefits the communities in the vicinity of the Property. Vastly increased spending by the Band government and its citizens in the Indiana portions of the Band's Service Area after the Property is taken into trust will boost local economies and increase the level of local government revenue. A variety of federal and state grant, contract, and other funds, including inter-governmental agreements between the Band and local governments, will also become available to offset any impacts to the local communities after the Property is taken into trust. For these reasons, the Band believes that transferring the Property into trust and the loss of property tax revenue will not result in adverse impacts on local governments or the State government that will not be fully mitigated by increased revenues generated by new commercial activity and spending by the Band in the vicinity of the Property.

The State of Indiana and the local jurisdictions around the Property will be partially relieved of the burden of providing law enforcement services for the Property. The Pokagon Band has a fully-staffed and fully-equipped Police Department that patrols all

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Band lands, including the Property. When the Property is taken into trust, the Police Department will exercise full jurisdiction over the Subject Property. The Band currently has cross-deputization law enforcement agreements with Berrien County, Cass County, and Van Buren County in Michigan, which allows these jurisdictions to share enforcement personnel and resources in the Michigan portions of the Band's Service Area. The Band's Police Department has had discussions with local law enforcement authorities in the Indiana portion of the Band's Service Area, including St. Joseph County, Indiana, regarding entering into similar law enforcement agreements with those jurisdictions. These cooperative efforts will relieve the local governments around and near the Property from the financial burden of providing law enforcement services, thus off-setting the loss of tax revenue in those jurisdictions when the Property is taken into trust.

The Band receives a variety of federal contract and grant funds to assist it in fulfilling its governmental responsibilities related to Pokagon land, including activities such as road improvements under the Indian Reservation Roads Program and infrastructure development through block grants under the U.S. Department of Housing and Urban Development – Indian Community Development program. The Band will continue to review its funding needs and will pursue federal funds related to the Property as needed. Any such additional funding will provide direct and indirect benefits to the local communities around and near the Property.

VI. POTENTIAL JURISDICTIONAL PROBLEMS AND LAND USE CONFLICTS (25 C.F.R. 151.10(f)).

A. Potential Jurisdictional Problems.

The Band does not believe that any jurisdictional problems with the State of Indiana or any of its political subdivisions will result from the transfer of the Property into trust. Criminal jurisdiction will be shared over the Property between the Band, the State and the federal government. The Band has an independent judiciary, the Pokagon Band Tribal Court, which was established by the Pokagon Band Constitution. The Tribal Court is fully prepared to hear all criminal and civil matters within the Band's jurisdiction regarding activities on or related to the Property. Indiana is not a Public Law 280 state. Consequently, the State and its political subdivisions do not have civil or criminal law enforcement powers over Indians for crimes that may occur on the Property after it is taken into trust. Primary law enforcement services will be provided by the Pokagon Band Police Department. The Pokagon Band Police Department has been working to develop good lines of communication and cooperative relationships with Indiana state and local law enforcement authorities. The Pokagon Band Police Department anticipates

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that the Band will eventually enter into cross-deputization agreements with the Indiana police agencies that exercise jurisdiction in the vicinity of the Property, similar to the Band's existing cross-deputization agreements with the BIA and three Michigan county sheriff's departments.

B. Potential Land Use Conflicts.

The Band is not aware of any potential land use conflicts that may arise from the Property being taken into trust and the planned development of the Property. As indicated in Section IV and in accordance with the requirements of Article IV of the Pokagon Band Constitution, Exhibit 7, the Band has been engaged in land use master planning for all tribal land holdings, including the Subject Property in accordance with the Pokagon Band Land Use and Conservation Code, attached as Exhibit 9. In 2011, the Band enacted a "Land Use and Conservation Code" in order to fulfill the requirements of Article IV of the Pokagon Band Constitution and to facilitate the creation of a "Long Term Land Acquisition and Development Plan" that would govern Band decisions regarding additions to the tribal land base and development activities on tribal land. Based on the land use master planning process and the recommendations of the Pokagon Band Land Use Board, the Tribal Council made the following classifications of the seventeen parcels of land that comprise the Property:

1. Commercial. Parcel Nos. 3a (the portion of parcel 3 that lies to the west of the electric power easement), 11, 12, 13a (a lesser portion of parcel 13 that is subject to a lease involving a commercial antennae tower located on the parcel), 14, 15, 16, and 17.
2. Non-Commercial. Parcel Nos. 1, 2, 3b (the portion of parcel 3 that lies to the east of the electric power easement that runs in a north-south direction through parcel 3), 4, 5, 6, 7, 8, 9, 10 and 13b (the greater portion of parcel 13 that is not subject to a lease).

The Band enacted a Health, Environmental Protection and Building Codes Act "Building Codes Act") in 2002 and enacted comprehensive amendments to the Building Codes Act in 2010. The Building Codes Act established a regulatory framework that governs sanitation, activities affecting the environment, and construction on Band trust lands. This body of regulatory standards and enforcement mechanisms will minimize and mitigate potential land use conflicts that may arise when the Property is taken into trust. The Band is committed to fulfilling all of its governmental responsibilities for regulating the use and development of the Property.

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The Band carefully chose the parcels that comprise the Property to comply with the terms of the MOU and to fulfill the Band's needs without causing any significant impact on the environment. The Property is zoned SF-1 (Single Family Residential) under the Municipal Code of the City of South Bend, which includes as permitted uses single family dwellings, two-family dwellings, governmental use, public facilities. See Section 21-02.02, South Bend Municipal Code. Although the SF-1 zoning designation does not include commercial development, as stated above in Section IV, the City of South Bend Comprehensive Plan and the St. Joseph County – South Bend Comprehensive Plan recognize the economic development potential of the Property by identifying the area in which the Property is located as a growth area and the intersection of State Road 23 and U.S. Highway 31/20 as a regional commercial node.

The Band has been engaged in ongoing efforts to foster an open, constructive relationship with officials in local jurisdictions in and around the Property. The Band will continue to pursue cooperative relationships with adjacent zoning jurisdictions to minimize any possible land use conflicts. The Band has excellent relationships with the communities and local governments surrounding its three land consolidation sites in Michigan and expects to develop and maintain a similar relationship with the City of South Bend and the local communities and governments in the vicinity of the South Bend consolidation site.

As a result of the Band's enactment of law and development of regulatory programs and its efforts to develop cooperative agreements with the local governments in the vicinity of the Property, the Band does not anticipate any jurisdictional problems resulting from the Secretary's action to take the Property into trust.

VII. ADDITIONAL BIA RESPONSIBILITIES (25 C.F.R. 151.10(g)).

The Band does not expect that the trust acquisition of the Property will result in any significant additional BIA responsibilities. The Band manages and provides a variety of programs and services to its trust land consolidation sites in Michigan with minimal involvement, if any, from the BIA.

The development of Band governmental offices, housing and community facilities and related infrastructure may involve, to some extent, federal programs, contracting, and compacting. However, the Band does not anticipate that its plans to develop the Property and serve its citizens that will reside on and near the Property will require any significant involvement by the BIA. The Property has no forestry or mineral resources that would require BIA management. Any leases, rights-of-way, or other transactions that may require Secretarial approval under federal law are expected to be few in number.

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Consequently, the Band has no reason to expect that the BIA will experience any meaningful increase in its responsibilities as a result of the transfer of the Property into trust. The Band believes that the BIA is adequately equipped without any increase in funding or staffing levels to discharge any modest additional responsibilities that may result from the acquisition of the Property into trust.

VIII. COMPLIANCE WITH NEPA (516 DM 6, Appendix 4), NHPA, AND CERCLA (602 DM 2).

A. NEPA Compliance.

The Band will cooperate with and assist the BIA as needed regarding the preparation of an Environmental Impact Statement in order to ensure that all reasonably foreseeable environmental impacts from the action of having the Subject Property taken into trust are identified and fully assessed and mitigated. The Band will coordinate with the BIA regarding all aspects of NEPA compliance, including the publication of the Notice of Intent at the earliest opportunity and the engagement of qualified environmental consultants to assist the BIA with the preparation of an Environmental Impact Statement.

B. NHPA Compliance.

The Band is not aware of any historic properties located on or near the Property that would qualify for inclusion on the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. § 470 *et seq.*). The Band, including its Tribal Historic Preservation Office, will assist the BIA with its efforts to consult and coordinate with the Indiana State Historic Preservation Office to determine if there may be any historic properties or archaeological resources located on or adjacent to the Property that may qualify for inclusion on the National Register of Historic Places. In addition, if there is any indication that the Band's development plans for the Property have the potential to cause effects to historic properties or archaeological resources that may be located on or adjacent to the Property, the Band will comply fully with applicable federal law, including 36 C.F.R. §§ 800.13.

C. CERCLA compliance.

The Band engaged a qualified private contractor to conduct Phase I Environmental Site Assessments ("ESA") on each of the seventeen parcels of land that comprise the Subject Property. Copies of the Phase I ESA's for each of the seventeen parcels and Limited Phase II ESA's for Parcels 4, 6, and 9 are attached hereto and marked as Exhibit 10.

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IX. COMPLIANCE WITH THE IGRA (25 U.S.C. § 2701 *et seq.*).

The IGRA contains a general prohibition against gaming on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988 (so called “after acquired lands”). See 25 U.S.C. §2719(a). The IGRA also provides an exemption from the prohibition against gaming on after acquired lands for “restored lands”, which are lands that are taken into trust as part of “the restoration of lands for an Indian tribe that is restored to Federal recognition.” See 25 U.S.C § 2719(b)(1)(B)(iii). Pursuant to the Pokagon Restoration Act, the Band qualifies as an Indian tribe that has been “restored to federal recognition”. See Solicitor’s Opinion, Exhibit 6, at page 7 and MOU, Exhibit 2, at paragraph 3. As noted in paragraph 3 of the MOU, lands located in the vicinity of one of the four consolidation sites, such as the Property, when taken into trust for the Band pursuant to the Pokagon Restoration Act are considered “restored lands” within the meaning of Section 20 of the IGRA, 25 U.S.C. § 2719. See also the Solicitor’s Opinion, Exhibit 6, at pages 7 and 8. As stated above, IGRA exempts “restored lands” from the general prohibition against gaming on after acquired lands.

X. OFF-RESERVATION ACQUISITIONS (25 C.F.R § 151.11).

The Band maintains the position that trust acquisition of the Property (i) is a mandated acquisition under the Restoration Act, and (ii) should be treated as an “on-reservation” acquisition and should not be subject to the requirements of 25 C.F.R. § 151.11(b) and (c). Pursuant to the Restoration Act and the MOU, trust acquisition of the Property is part of the federally contemplated and intended re-establishment of the Band’s reservation trust land base. In addressing in this Application the criteria for off-reservation acquisitions as set forth in 25 C.F.R. § 151.11, the Band does not waive any contention that the trust acquisition of the Property should be treated as an on-reservation acquisition or any contention that, pursuant to Section 6 of the Pokagon Restoration Act (25 U.S.C. § 1300j-5), the Secretary should process this trust land Application as a mandatory acquisition. However, pursuant to the MOU the Band is submitting this Application in the form set forth in 25 C.F.R. Part 151, and the Band is confident that this Application meets all criteria set forth in 25 C.F.R. Part 151, regardless of whether the Property is treated as an “on reservation” or “off reservation” acquisition. The reasons supporting the Band’s position that this Application should be treated as an on-reservation acquisition are set forth below in this Section.

A. Consideration of the location of the land relative to state boundaries, and its distance from the boundaries of the tribe’s reservation (25 C.F.R. § 151.11(b)).

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The distance from the Jones parcel (#10) on the Property to the Michigan border is 8 miles. The distance from the Jones Parcel to the southernmost parcel at the Dowagiac consolidation site (the Branch Parcel) is 20.22 miles.⁵

25 U.S.C. § 151.11(b) provides in relevant part: "... as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section." There are two reasons why this additional scrutiny should not apply to this trust acquisition. First, consideration of the location of the Property relative to the Michigan border would be relevant only in the circumstance where the Band was applying to have land taken into trust in a state where the Band is not federally recognized, which is not the case. Second, the Property is, pursuant to Section 3 of the MOU and 25 C.F.R. § 151.2(h), a tribal consolidation area. Pursuant to 25 C.F.R. § 151.3(a)(1), tribal consolidation areas are treated similar to on-reservation acquisitions.

B. Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use (25 C.F.R. § 151.11 (c)).

As noted above, only part of the Property (Parcel 3) will be used for commercial purposes. The Band intends to develop the Gaming Project on Parcel 3 to pay for the land acquisition costs of the Property, the development and construction of residential housing and governmental buildings on the Property, and the provisions of governmental services to Band members. The Band currently operates two gaming facilities through the Pokagon Gaming Authority: the Four Winds Casino Resort in New Buffalo, Michigan, and the Four Winds Casino in Hartford, Michigan. This section of the Application describes the demographic and competitive environment for the Gaming Project and the intended scope of the Project.

1. Demographic and Competitive Environment.

- a. *Market.*** The Property on which the Gaming Project will be developed is located within the City of South Bend. According to a study published by the South Bend Visitor's Bureau, a total of 4.1 million people visited South Bend in 2009, with an additional 1.7 million people passing through. The Gaming Project will have access to almost 620,000 people within 25 linear miles, which includes the cities of South Bend, Mishawaka, Elkhart, Goshen and La Porte. Over 1.3 million people live within a 50-mile radius

⁵ Calculation made using the Google Earth ruler application.

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and one-hour drive of the Property in and around the cities of Portage, Valparaiso and Michigan City, Indiana. There are more than 11.8 million people within a 100-mile radius and a two-hour drive of the Property, which includes the cities of Fort Wayne, Hammond, and Gary in Indiana, Grand Rapids, Kalamazoo, Portage and Battle Creek in Michigan, and Chicago, Joliet and Kankakee in Illinois.

- b. *Transportation.*** As stated above, the Property is located at the intersection of U.S. Highway 31/20 and Indiana State Road 23. From the Property, State Road 23 travels northeast several miles to downtown South Bend. U.S. Highway 31/20 provides direct access to other major transportation routes and population centers in the region, including U.S. Highways 6,12, 24 and 30 and Interstates 65, 69, 70, 74, 80, 90 and 94. A new U.S. Highway 31/20 upgrade is currently under construction, which will significantly improve traffic capacity along the north-south corridor between Indianapolis and South Bend. The project is scheduled to be completed in phases between 2013 and 2015.
- c. *Income.*** Although average household income levels in the South Bend area are lower than the national average of \$71,000, median household income levels in the broader region are higher than the national median of \$52,795. Over the next five years, average household income is expected to increase between 4.7 and 6.1 percent. Overall, this indicates a reasonably strong middle class in the regional market to support the Gaming Project.
- d. *Employment.*** The Property is located in St. Joseph County. According to statistics provided by the U.S. Department of Labor, Bureau of Labor Statistics, St. Joseph County had a labor force of 127,457 in 2010, with an average annual unemployment rate of 11.5 percent. The labor force in 2009 was 128,404 and an annual average unemployment rate of 11.2 percent.
- e. *Competition.*** There are three existing gaming operations located within a 0 – 50-mile radius and a one-hour drive of the Property, including the two existing Four Winds properties in New Buffalo, Michigan and Hartford, Michigan, as well as the Blue Chip Casino, Hotel & Spa in Michigan City. Combined, the three casinos have almost 5,400 slot machines and more than 140 table games. There are another eight existing gaming operations located within a 50 – 100-mile radius and a two-hour drive of the Property. These operations house another 16,400 slot machines and 550 table games.

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Combined, the eleven casinos that will comprise the primary competition for the Gaming Project contain a total of approximately 21,800 slot machines and 690 table games.

2. **Proposed Facility.** Based on its analysis of the market, the Band currently intends to develop a facility roughly comparable in scope to the Four Winds Casino Resort in New Buffalo. The table below sets out the currently anticipated development scope of the proposed Gaming Project in South Bend.⁶

KEY GAMING PROJECT SPECIFICATIONS

Slot Machines	3,000
Table Games	75
Hotel Rooms	500
F&B Outlets	10
Meeting/Banquet Space (sq.ft.)	20,000
Garage Parking Spaces	3,500
Surface Parking Spaces	500
Employees	2,000
Gaming Floor Space (sq.ft.)	216,500

The Gaming Project will be very similar in size, quality, and amenities to the Band's existing Four Winds Casino Resort in New Buffalo, Michigan. By way of comparison, the planned Gaming Project and the existing Four Winds New Buffalo facility have identical or nearly identical specifications regarding square footage of gaming floor space, number of slot machines and table games, F&B outlets, total parking spaces, and number of employees.⁷

3. **Anticipated Economic Benefits.** The Band expects that the Gaming Project will have a positive economic impact for the Band as well as non-native citizens, vendors and the regional South Bend, Indiana economy.

- a. **New Employment.** With the creation of approximately 2,000 new jobs, the Gaming Project will provide abundant new employment opportunities for

⁶ The Band expects that the precise details of development of the Gaming Project development will be refined and finalized during the scoping process for preparation of the Environmental Impact Statement.

⁷ An expansion project is currently underway at Four Winds New Buffalo, which will increase the number of hotel rooms and F&B outlets and will add a new multi-purpose event center. As a consequence, the number of employees needed for the Four Winds New Buffalo facility will also increase. Completion of the expansion project is expected in July of 2012.

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Band citizens and non-natives living in South Bend and the surrounding communities. Due to the significant number of new jobs, the Band expects that non-natives will fill the vast majority of the new jobs. Currently, Four Winds New Buffalo employs 129 Band citizens and Four Winds Hartford employs 77 Band citizens, which represents a combined average of nearly 11% Band citizen employment. Of the 206 total Band citizen employees, 58 are in a supervisory or management position. Also, since 2007 when the Band commenced gaming, there have been 240 instances where Band citizen employees have been promoted to a supervisory position or transferred to another position with higher pay. These existing jobs created by the Pokagon Band have paid a total of over \$23 million in salary and benefits, which has raised the standard of living for hundreds of Pokagon Band families. The Gaming Project, along with the Band's governmental facilities to be located on the Property, is expected to provide similar employment opportunities and economic benefits to Band citizens and non-natives living in the South Bend area.

- b. *Payments to Vendors.*** The Band expects that the Gaming Project will have a positive impact on local businesses and suppliers in the area of the Gaming Project. For example, excluding project development and construction costs, the Band's existing Four Winds properties have paid an approximate total of \$466 million in payments to over 1,900 vendors over the last five years, of which approximately 341 vendors that are based in Indiana have collected \$24.5 million.

XI. EVIDENCE OF TITLE (25 C.F.R. § 151.13).

For each parcel included in the Property the following title evidence is attached:

- A.** Copies of the deeds conveying the Property to the WJC Holdings, LLC, an Indiana limited liability company that is wholly owned by the Pokagon Band. (Exhibit 11A, Jacobs); (Exhibit 11B, Crady); (Exhibit 11C, Bill Marvin); (Exhibit 11D, Miltenberger); (Exhibit 11E, Santana); (Exhibit 11F, Jurgonski); (Exhibit 11G, Sedam); (Exhibit 11H, Horrall); (Exhibit 11I, Hutchins); (Exhibit 11J, Jones); (Exhibit 11K, Cataldo); (Exhibit 11L, Haverstock); (Exhibit 11M, Geyer); (Exhibit 11N, Shafer); (Exhibit 11O, Jantzi); (Exhibit 11P, Bova); and (Exhibit 11Q, Gary Marvin).
- B.** Title insurance commitments for policies to be issued on ALTA U.S. Policy Form (revised 9/28/91) that will name the United States in trust for the Pokagon Band of

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Potawatomi Indians as the insured party (Exhibit 12A, Jacobs); (Exhibit 12B, Crady); (Exhibit 12C, Bill Marvin); (Exhibit 12D, Miltenberger); (Exhibit 12E, Santana); (Exhibit 12F, Jurgonski); (Exhibit 12G, Sedam); (Exhibit 12H, Horrall); (Exhibit 12I, Hutchins); (Exhibit 12J, Jones); (Exhibit 12K, Cataldo); (Exhibit 12L, Haverstock); (Exhibit 12M, Geyer); (Exhibit 12N, Shafer); (Exhibit 12O, Jantzi); (Exhibit 12P, Bova); and (Exhibit 12Q, Gary Marvin).

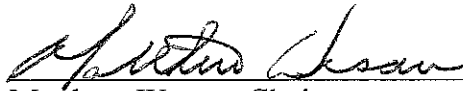
XII. DRAFT DEEDS.

Draft warranty deeds from WJC Holdings, LLC to the United States of America in trust for the Pokagon Band of Potawatomi Indians conveying the seventeen parcels are attached. (Exhibits 13A – 13Q).

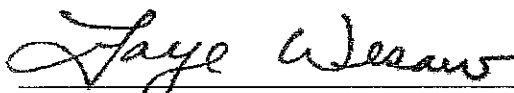
Date: May 14, 2012

Respectfully submitted,

**POKAGON BAND OF POTAWATOMI
INDIANS**



Matthew Wesaw, Chairman



Faye Wesaw, Secretary